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Department of State

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Proposed Statements of Basis, Purpose and Specific Statutory Authority

Office of the Secretary of State
Colorado Secretary of State Rules Concerning Campaign and Political Finance

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1. Basis and Purpose

This statement pertains to the amendments and revisions to the Colorado Secretary of State Rules Concerning Campaign and Political Finance for the administration of Colorado State Constitution Article XXVIII, and Article 45, Title 1 of the Colorado Revised Statutes. The amendments are implemented to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado.

The amendments and revisions to these rules are necessary for the implementation of Article XXVIII of the Colorado Constitution and Article 45, Title 1 of the Colorado Revised Statutes. The Secretary of State finds that the adoption and enactment of these amendments is necessary to answer questions arising under Article XXVIII of the Colorado Constitution and Article 45 of Title 1 of the Colorado Revised Statutes, and to implement amendments to the campaign and political finance laws made during the 2007 regular session of the 66th General Assembly.

The adoption of specific amendments to the Election Rules is necessary as follows:

- Revisions to Rule 1.4 and new Rule 4.21 are necessary to implement the amendments to Article 45 of Title 1, C.R.S., made by HB07-1323. Specifically, these amendments clarify definitions and disclosure requirements for limited liability companies under the Fair Campaign Practices Act.
- The adoption of new Rule 1.5 and the amendments to Rule 2.5 are necessary to clarify when a ballot question or ballot issue is considered an “issue” for the purposes of Article XXVIII, Section 2(10) of the Colorado Constitution, and to clarify when issue committees must disclose the specific issues being supported or opposed.
- The amendments to Rule 2.2 are necessary to clarify who may sign registration forms and disclosure reports for issue committees, political committees, small donor committees, and political parties.
- The amendments to Rules 2.8, 5.6, 5.10, 5.11, and 11.3 are necessary to make technical corrections, repeal expired provisions, and to correct statutory citations.

- The amendments to Rule 2.10 are necessary to clarify the process by which the Secretary of State may administratively close a committee because of inactivity.
- The amendments to Rule 2.11 are necessary to clarify who the appropriate filing officer is for political committees supporting or opposing school board candidates and issue committees supporting or opposing school district issues, where the district is shared by one or more counties.
- The adoption of new Rule 3.10 is necessary to clarify the definition of “contribution” as it applies to commercial debt accumulated by a candidate committee, and to clarify how the committee may dispose of such debt.
- The repeal of Rule 4.7 is necessary to implement amendments to the Colorado election laws made by SB07-083 in accordance with *Buckley v. American Constitutional Law Foundation*, 520 U.S. 182 (1999), regarding disclosure requirements for proponents who pay petition circulators.
- The amendments to Rule 4.10 are necessary to clarify that the occupation and employer disclosure requirement in Article XXVIII, Section 7 and section 1-45-108, C.R.S., do not apply to aggregate contributions of \$100 or more. Rather, the requirement applies to any single contribution of \$100 or more.
- The adoption of new Rules 4.18 and 4.19 are necessary to address questions that have arisen regarding whether a committee may deposit funds into more than one financial institution and whether a committee may invest its funds. Specifically, Rule 4.18 clarifies that the provision in Article XXVIII, Section 3(9) of the Colorado Constitution that committee funds be deposited into “a financial institution” does not require that the funds be deposited into one, single financial institution. Rule 4.19 establishes that committees may invest their funds and that while interest and periodic fees must be disclosed, they are not considered to be contributions or expenditures.
- The adoption of new Rules 4.20 and 6.4, and the amendments to Rule 11.4 are necessary to implement the amendments to Article 45 of Title 1, C.R.S., made by HB07-1074. Specifically, new Rule 4.20 clarifies the disclosure requirements and filing schedule for “Political Organizations” as defined in section 1-45-103(14.5), C.R.S. New Rule 6.4 provides a complaint procedure for violations of the provisions of section 1-45-108.5, C.R.S. The amendments to Rule 11.4 clarify what constitutes an “entry” with regard to disclosure reports filed by “Political Organizations.”
- The adoption of new Rule 4.22 is necessary to clarify that corporations and labor organizations shall not make Independent Expenditures in accordance with Article XXVIII, Section 3 (4) (a) and Section 5.
- The adoption of new Rule 5.12 is necessary to clarify that once a committee has declared that they are active, the committee must file according to that filing schedule for the remainder of the calendar year.

- The amendments to Rules 8.1 and 8.4 are necessary to clarify the campaign finance disclosure filing requirements for special district director candidates. Specifically, the amendments to Rule 8.1 would require that the special district provide copies of the candidates' self-nomination and acceptance forms and letters, and affidavits of intent to be a write-in candidate no later than the time of ballot certification. Rule 8.4 would allow a special district candidate to file a written affirmation notifying the county clerk that he or she will not receive contributions or make expenditures more of more than \$20.
- The adoption of new Rule 9.5 is necessary to conform Electioneering Communication provisions to the Supreme Court determination in *FEC v. Wisconsin Right to Life*, 127 U.S. 2652 (2007).
- The amendments to Rule 11.1 are necessary to clarify that personal financial disclosure statements filed pursuant to section 1-45-110(2), C.R.S., are exempt from mandatory electronic filing.
- The adoption of new Rule 4.23 is necessary to provide a mechanism by which a person may apply to the Secretary of State to redact sensitive from campaign finance disclosure reports if such person's safety or that of an immediate family member's may be jeopardized by sensitive information contained in the report.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the permanent adoption of the amendments and revisions to the Campaign and Political Finance Rules is necessary both to comply with law and to preserve the public welfare generally.

2. Statutory Authority

Amendments and revisions to the "Secretary of State Rules Concerning Campaign and Political Finance" are adopted pursuant to the following statutory and constitutional provisions:

1. Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which authorizes the Secretary of State to:
 "Promulgate such rules, in accordance with Article 4 of Title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution]."
2. Section 1-1-107(2)(a), C.R.S., (2006), which authorizes the Secretary of State:
 "To promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws."
3. Section 1-45-111.5(1), C.R.S., (2006), which authorizes the Secretary of State to:
 "[P]romulgate such rules in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of [Article 45 of Title 1, C.R.S.]."